

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE No. 185060  
Issued to: William S. Strudwick

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2330

William S. Strudwick

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 11 March 1983, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida revoked Appellant's license upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that on or about 28 January 1980, Appellant was convicted of conspiracy to traffic in cannabis by the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County Florida.

The hearing was held at Miami, Florida on 9 February 1983.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence four exhibits.

In defense, Appellant offered in evidence his own testimony, that of his fiancée, and three exhibits.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all licenses and documents issued to Appellant.

The decision was announced on 9 February 1983. Appeal was timely filed on 18 February 1983 and perfected on 20 June 1983.

FINDINGS OF FACT

On 28 January 1980 Appellant was convicted of a criminal conspiracy to traffic in cannabis by the Circuit Court in and for Broward County, Florida following his plea of guilty. He was fined \$4000 and sentenced to one year in jail of which he actually served

nine months.

The object of the conspiracy was to bring over 10,000 pounds of cannabis into the State of Florida by boat from the island of Plana Cay, Bahamas. Appellant became involved a short time before the actual smuggling operation when he was offered \$20,000 to help bring in the load. He then participated in the operation as a crew member in one of the boats.

Appellant's occupation is that of an operator of fishing boats carrying passengers. He works out of a marina where there are several such boats and serves as operator or mate on any of them as the opportunity presents itself. At the time of the hearing he was regularly employed on a vessel that made about ten or eleven trips per week. In addition, he would work on the other boats as they needed him. At the time the charges were served, 6 December 1982, he was employed on a commercial fishing vessel and was not working under his license because business was poor.

He provides support for his fiancée and her two children. At the time of the hearing she was also employed and had worked while he was in jail.

At the hearing Appellant offered three exhibits: first, a copy of license renewal application dated 8 September 1982 showing that he stated at that time he had been convicted of a crime; second, a letter from the Department of Corrections, State of Florida, Probation and Parole Services, dated 8 February 1983 stating that his parole was progressing satisfactorily except for payment of his fine; and third, a letter from the Miami Spring Senior High Adult Education Center and Community School stating that he was enrolled in a reading course.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that:

1. 46 CFR 5.03-10 is invalid because it requires revocation in each case where conviction for a narcotic drug offense is proved.
2. The Administrative Law Judge erred in concluding that he lacked authority to render a sanction other than revocation.
3. The marijuana conviction by itself is insufficient for the sanction of revocation.

4. The sanction of revocation is disproportionate to the offense under the circumstances.

APPEARANCE: Nils Linfors, Jr., of Hayden and Milliken, P.A. Suite 5915 Ponce DeLeon Boulevard, Miami, Florida.

#### OPINION

##### I

Appellant initially challenges the validity of 46 CFR 5.03-10 on both statutory and constitutional grounds. This regulation requires that the Administrative Law Judge enter an order of revocation following proof of a narcotic drug law conviction. These administrative proceedings, however, are not a proper forum for challenging the validity of statutes and regulations. See Appeal Decisions 1999 (ALT and JOSSY) and 2202 (VAIL).

##### II and III

The issues of whether an Administrative Law Judge has authority to render a sanction other than revocation following proof of a conviction for a narcotic drug law violation and whether a marijuana conviction by itself is a sufficient basis on which to enter an order of revocation have been recently discussed in Appeal Decision 2303 (HODGMAN). In HODGMAN I concluded that the Administrative Law Judge is properly required to enter an order of revocation following proof of conviction for a marijuana offense. I will not repeat that discussion here.

##### IV

Finally, Appellant urges that revocation is not appropriate in this case. I do not agree.

Under 46 U.S.C. 239b I have discretion to revoke or not to revoke a license or document following a narcotic drug law conviction. In most cases revocation is appropriate. Where unusual circumstances exist such that revocation is not appropriate I have vacated the order of the Administrative Law Judge or made provision for an individual to make early application for a new license or document. See Appeal Decision 2303 (HODGMAN).

Examination of the record in this case does not reveal information regarding this Appellant which convinces me that he should retain his license. In fact, the weight of the evidence is that Appellant has demonstrated no significant change since before his conviction. Although each case must be decided on its own facts, the following circumstances particularly impress me

regarding this Appellant. He has not held a steady job for any period of time but works on various vessels as the need for an operator or mate arises. There is little or no evidence of strong ties to a family or community. He has a fiancée and provides partial support for her and her children but there is no evidence of association with groups in the community. There is no evidence that others in the community who know him well can vouch for his present good character. There is no indication that those for whom he presently works can vouch for him. The letter from his probation officer indicates only that he is making satisfactory progress on his probation, with the exception of payment of his fine, but lacks detail about his activities. The letter from the Adult Education Center is favorable in that it shows Appellant is making some attempt to improve himself and is willing to help others in the class. It, however, gives no indication of his activity outside of the class. The crime for which Appellant was convicted was especially serious. He was involved in smuggling over 10,000 pounds of cannabis into Florida. It appears from the record that he readily became involved when offered \$20,000 by apparent strangers. I find nothing in the record to convince me that Appellant's habits, associations, character or reputation have been significantly improved since that time.

In addition, I note that Appellant was the holder of a license rather than a document. A license confers on an individual far greater authority and the right to assume far greater responsibility than does a document. A motorboat operator's license such as Appellant's allows the holder to assume responsibility for operation of a vessel carrying passengers for hire. 46 U.S.C. 8903. It is not issued without considering the prospective holder's good character and habits of life. 46 CFR 10.20-3(c). As a consequence, the person who wishes to continue to hold a license following conviction for a narcotic offense must make a very strong showing that he is rehabilitated. This, Appellant has not done.

#### CONCLUSION

There was substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was fair and conducted in accordance with the requirements of applicable regulations. The sanction of revocation is appropriate in this case.

#### ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida on 11 March 1983, is AFFIRMED.

J. S. GRACEY  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D.C., this 7th day of October 1983.